

## REMARKS

Applicants have considered the Examiner's bases for rejection of the now-pending claims and have included in the only independent claim 41, limitations believed to place said claim in condition for allowance. Such allowance is respectfully requested on the basis of the following comments. Support for the amendment of claim 41 may be found in the specification beginning on page 7 at line 26 and in Fig. 2. No new matter has been added.

### ***Claim Rejections –35 USC §103***

Claim 41 is rejected under 35 USC ¶103(a) as being unpatentable over Berry et al (US 6,014,451). The Examiner notes that Berry does not teach that his invention is applicable without use of a culturing agent. Applicants' claimed invention specifies that photomicrographs of the samples are obtained without the use of a culturing agent. Because an objective of the present invention is to enable semi-skilled persons to capture the photomicrographs of samples in their original, natural environment, the Examiner's suggestion that a person in a non-plant field would employ the teachings of Berry, wherein a culturing agent is required, is respectfully traversed. Applicants believe it would be erroneous for one to suggest considering teachings in a field requiring culturing when an objective of the claimed invention is to avoid the use of a culture.

In the recent case *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350 550 U. S. \_\_\_\_ (Apr. 30, 2007), the Supreme Court held that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." (*KSR*, slip op. at 14 bridging to 15, underlining added for emphasis).

In this instance, the field of applicant's endeavor involves the identification of air born fungal spores and molds without the use of culturing agents and in complete contrast, Berry's field of endeavor involves identification of plant anomalies requiring the use of culturing agent. Applicants thus believe the Examiner has failed to provide a valid reason to consider Berry's teachings, ergo there is no valid basis for the present rejection. Applicants thus respectfully request that the rejection of claim 41 be withdrawn in view of the limitation therein requiring that the step of identifying be completed without requiring use of culture growth media.

In addition, the Examiner has stated that Applicants use of a commercially available camera, as Berry does, nullifies patentability of apparently claim 41, when imaging a mold or fungi sample that requires high resolution. In fact, as explained on page 7, line 26 bridging to page 8, line 14 of the specification (underlining added for emphasis),

The high-resolution lens magnification system 16 illustrated in FIG. 2 and which provides the magnification and resolution necessary to achieve the objects of the present invention was not available commercially and therefore had to be created to certain specifications, including:

- Glass pickup lens 42
- 2X power television tube 44, to allow the lens to be used with a digital camera.
- 2.0X to 3.0X power auxiliary lens 46 below the TV tube
- Zoom 70X2 lens 48 with modified fine internal focus and an optional iris diaphragm; the iris being optionally employed only if an adjustable light source diaphragm is not available.

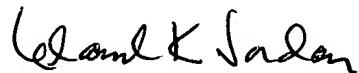
Applicants have therefore included this limitation in claim 41 to order to overcome the Examiner's rejection of claim 41 and to place at least claim 41 in condition for allowance. Applicants thus respectfully request that the rejection of claim 41 be withdrawn in view of the limitation therein requiring that the step of identifying be completed using a non-commercial lens system.

Claims 43-45 have been canceled and the remaining claims 42 and 46-51 further limit claim 41; for the reasons given above, claims 42 and 46-51 are therefore believed to contain patentable matter and their allowance is respectfully requested.

**Conclusion**

Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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